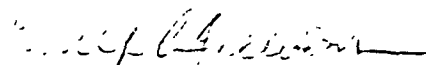


Office of Chief Counsel
Internal Revenue Service
memorandum

CC:PA:APJP:1:TChristianson
PRENO-164749-02

date: FEB 10 2003

to: CAROL E. BRAUZER
Computer Specialist
W:CAS:SP:IEF:P

from: James C. Gibbons 
Branch Chief
CC:PA:APJP:1

subject: Preparer/ERO Electronic Signature Issues

This is in response to your e-mail dated November 19, 2002, regarding Preparer/ERO Electronic Signature issues posed by you and your colleagues in connection with the IRS e-file program. We have framed the issues as follows:

ISSUES

1. A. Must an Electronic Return Originator (ERO) EFIN/PIN be specific to an individual income tax return preparer (preparer)?

B. Would use of the same ERO EFIN/PIN by all preparers in an ERO firm create preparer litigation problems for the Internal Revenue Service (Service)?
2. Must a preparer take an affirmative action (keystroke or otherwise) to enter the ERO PIN when completing an e-filed tax return?
3. A. Whether preparation, review, and preparer signature of an individual's tax return by computer software constitutes sufficient review of the return prior to the presentation of the return to the individual taxpayer?

B. Whether review and signature by a preparer after the taxpayer signs the return through internet transmission, but before transmission to the Service, complies with section 6107 and 6695 of the Internal Revenue Code (Code)?
4. A. Must unpaid preparers in Service sponsored tax assistance programs (volunteers) execute the Form 8879, "IRS e-file Signature Authorization," when using the Practitioner PIN Method of filing a return?

B. If the volunteers must complete Form 8879, can they sign by using the volunteer program name and site designation number in place of an ERO EFIN/PIN?

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5. Can all the volunteers from the same organization sponsoring or administering a program to provide tax counseling (Sponsor) use the same ERO EFIN/PIN when completing the Form 8879?

Law and Analysis

Issue 1A

Law:

Section 6109(a)(4) of the Code provides that any return or claim for refund prepared by an income tax return preparer shall bear such identifying number for securing proper identification of such preparer, his employer, or both, as may be prescribed. Section 301.6109-1(a)(1)(ii)(C) of the Regulations on Procedure and Administration (regulations) states that any person other than an individual (such as a corporation, partnership, nonprofit association, trust, estate, and similar nonindividual persons) that is required to furnish a taxpayer identifying number must use an employer identification number. The regulations further provide that the returns, statements, and other documents required to be filed shall reflect such identifying numbers as are required by each return, statement, or document and its related instructions.

Treasury Regulation (Treas. Reg.) § 1.6109-2T provides that each return of tax prepared by one or more income tax return preparers must include the identifying number of the preparer required by Treas. Reg. § 1.6695-1(b) to sign the return or claim for refund. In addition, if there is a partnership or employment arrangement between two or more preparers, the identifying number of the partnership or employer must also appear on the return or claim for refund in addition to the individual preparer's identifying number.

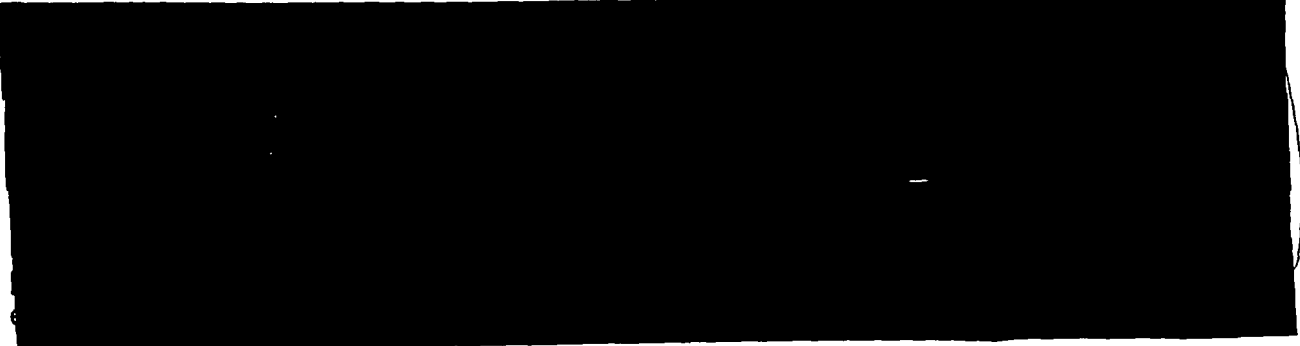
The regulations provide that an individual preparer's identifying number is that preparer's social security number, or such alternatives as may be prescribed by the Service. The identifying number of a preparer (whether an individual, corporation, or partnership) who employs one or more persons to prepare the return or claim for refund is that preparer's employer identification number (EIN). See, Treas. Reg. § 1.6109-2T(1)(a)(2)-(3). Section 6695(c) of the Code promotes preparer compliance by imposing a \$50 penalty on any income tax return preparer who fails to comply with § 6109(a)(4) of the Code.

Analysis:

Pursuant to § 6109 of the Code and the regulations thereunder, each preparer in an ERO firm *must* include his identifying number on each return that he is required to sign. (Emphasis added). Additionally, if there is a partnership or employment arrangement between two or more preparers, the identifying number of the partnership or employer *must also* appear on the return or claim for refund. (Emphasis added). Therefore, both the individual preparer and the ERO firm must provide unique identifying numbers on a return.

Issue 1B*Law and Analysis:*

As stated above, the Code prohibits use of the same ERO PIN by multiple preparers.

Issue 2*Law:*

Section 6061(a) of the Code provides that except as otherwise provided by subsection (b) (relating to signature waivers) and §§ 6062 and 6063 (relating to signing of corporation returns and partnership returns, respectively), any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary. Additionally, § 301.6061-1(b) of the regulations provide that the Secretary may prescribe in forms, instructions, or other appropriate guidance the method of signing any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations.

Section 6065 of the Code specifies that except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

Sections 6061 and 6065 of the Code and the regulations thereunder gives the Secretary broad discretion to prescribe the method of signing any return, statement, or other document. Sections 6061 and 6065 do not define signature, but rather subsume the common law definition. At common law, a signature authenticates a return or claim for refund by identifying the document as the signer's. The critical element of authentication is the signer's affirmative act of adopting the document being signed. The signer's affirmative act of transmitting or authorizing the transmission of the *e-filed* return constitutes the requisite intent of adopting the PIN as his or her signature.

It is the Service's position that an electronic signature meets all of the requirements of an authenticated signature at common law. Therefore, if a taxpayer or tax return preparer adopts a PIN as his signature, the use of the PIN as the method of signing satisfies the requirements of §§ 6061 and 6065 of the Code.

Analysis:

An ERO must provide his PIN on an electronic return. The PIN identifies that person as the preparer of a taxpayer's *e-filed* return. In addition to providing a PIN, the preparer must adopt that PIN as his signature. The requisite intent of adopting a PIN as a signature is inferred from the preparer's affirmative act of transmitting or authorizing the transmission of the *e-filed* return. As a result, it is the dual act of entering the PIN and transmitting the return which constitutes the signing of the return by the preparer when using a PIN. The automatic entry of the ERO PIN into the *e-file* form by software (populated PIN) does not automatically preclude the ERO from adopting that PIN as his signature. Additional affirmative acts on the part of an ERO, such as transmission or authorization to transmit the completed return, is sufficient to infer the requisite intent to adopt the PIN as his signature. Therefore, it is necessary for a preparer to provide a PIN on the completed return, either by populated PIN or manual keystroke, and take an affirmative action to acknowledge the ERO PIN as his signature in connection with an *e-filed* tax return.

Issue 3A*Law:*

Treas. Reg. § 6107-1(a) provides that an income tax return preparer shall furnish a completed copy of the original return to the taxpayer not later than the time the original return is presented for the signature of the taxpayer. Similarly, Treas. Reg. § 1.6695-1(b)(1) states that an individual who is an income tax return preparer shall manually enter his signature on the return or claim for refund after it is completed and before it is presented to the taxpayer for signature. These Code provisions require the preparer to provide a completed copy of the original return when presenting the return for taxpayer signature, and do not address any required standard of review by the preparer.

Section 301.6061-1(b) of the regulations provide that the Secretary may prescribe forms, instructions, or other appropriate guidance concerning the method of signing any return or statement required to be made under any provision of the internal revenue laws. Many forms require the paid preparer to examine a taxpayer's return and accompanying schedules before signing. See Forms 8453, Form 1040 Series. An appropriate method of examining or reviewing a taxpayer's return is not defined in the forms or instructions.

Analysis:

Currently, preparers can input taxpayer return information into computer programs, and the program automatically generates the completed return after reviewing the return through its internal checks and balances process. Reliance on computer software to review the taxpayer's return is in compliance with the Code if the return is complete upon presentation to the taxpayer for signature. The forms explicitly require paid preparers to examine the form prior to signing. However, the lack of guidance on acceptable review practices by practitioners prior to signing a return makes it difficult to

establish any review thresholds. Therefore, we conclude that a preparer performs adequate examination of a return if he chooses to rely on computer software to review a taxpayer's return.

A preparer's signature, however, verifies the return by confirming the truth, correctness, and completeness of the document. This verification makes the preparer responsible for the accuracy of the information contained in the return. If the preparer chooses to rely on the accuracy of the software without manually reviewing the return, the preparer may be precluded from later asserting reasonable cause reliance to preclude a § 6695 penalty application.

Issue 3B

Law and Analysis:

As previously stated, Treas. Reg. § 1.6107-1 provides that a preparer must furnish a completed copy of the original return to the taxpayer when the return is presented for the taxpayer's signature. Additionally, Treas. Reg. § 1.6695-1(b) provides that an income tax return preparer must manually sign the return after it is completed and before it is presented to the taxpayer for signature. Both regulations require that the ERO preparer sign the return *prior* to the presentation and signing of the completed return by the taxpayer. Therefore, completion and signing of the return by the taxpayer (via internet or mechanical assistance from an individual other than the income tax return preparer) before the preparer signs the return is prohibited by Treas. Reg. §§ 1.6695-1 and 1.6107-1 of the Code.

Issue 4

Law:

In general, § 7701(a)(36) of the Code defines an income tax return preparer as any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax. Section 301.7701-15(a)(7) of the regulations provides an exception to this definition, stating that any individual who provides tax assistance under a Volunteer Income Tax Assistance (VITA) program established by the Service is not an income tax return preparer. Consequently, certified volunteers are not subject to the requirements and penalties applicable by the Code to income tax return preparers.

As stated above, § 6061 of the Code provides that any return or other document required to be made under any provision of the internal revenue laws shall be signed in accordance with the forms prescribed by the Secretary.

Analysis:

Form 8879 "IRS e-file Signature Authorization" authorizes an ERO to electronically sign an e-file return on behalf of the taxpayer, and is proof that the ERO obtained the taxpayer's permission to enter the taxpayer's PIN on the e-file return. The Form 8879

must be completed and retained by the ERO whenever the ERO uses the Practitioner PIN method to file a return. The Form 8879 execution requirements extend to volunteers using the practitioner PIN method when filing a return. The fact that the Centers are performing the e-file services free of charge is irrelevant as to the need to complete the form. Therefore, to properly effect the e-file of a taxpayer's return when using the practitioner PIN method of filing, the volunteers must execute the Form 8879, including Part III which includes the ERO EFIN/PIN.

Although a VITA volunteer is not an income tax return preparer for purposes of the Code, the regulations do not exempt volunteers from submitting forms required by the Service. Specifically, the Service requires all ERO preparers and VITA volunteers to sign and submit Form 8453, "U.S. Individual Income Tax Declaration for Electronic Filing," when an electronic return is filed on behalf of a taxpayer. Volunteers are required to sign the ERO portion of the Form 8453 and submit the completed form to the Service every time the volunteer prepares an electronic return for a taxpayer. The Service allows the volunteer to sign the ERO portion of the Form 8453 by entering either their PIN or the volunteer program's name or acronym and site number. See Publication 1345, "Handbook for Authorized IRS e-file Provider." By analogy, we conclude that a volunteer can sign the ERO portion of the Form 8879 by entering the volunteer program's name or acronym and site number when using the practitioner PIN method of filing a return.

We understand that allowing a VITA volunteer to electronically enter the taxpayer's PIN after receiving authorization from the taxpayer would be a new method of filing for the VITA program. The Form 8879 must be completed by the volunteer because it provides proof that the volunteer received the taxpayer's permission to enter the taxpayer's PIN. Without proof of authorization, the taxpayer could easily disavow his signature on the e-file return. The Form 8879, however, requires the Sponsor to retain the form for three years. Accordingly, the Service should balance the desirability of allowing a volunteer to sign the e-file return for the taxpayer against the VITA sponsor's storage burden.

Issue 5

Law and Analysis:

All volunteers from one sponsor site can use the same ERO EFIN/PIN when signing the Form 8879 by PIN. The individual identifying number requirement in § 6109 and the penalties in § 6695(c) of the Code only apply to individual income tax return preparers. Section 7701 of the Code and the regulations thereunder provides that Service sponsored volunteers are not income tax return preparers, and consequently, are not subject to the signing requirements and preparer penalties established in the Code. Since volunteers are not preparers, they are not required to sign prepared returns with their individual preparer PIN number, and the volunteers may use the same ERO EFIN/PIN.

Please contact Tonya Christianson at 202-622-4910 with additional questions.